

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1248

JAMES A. QUILLINAN

APRIL 3 (legislative day, MARCH 30), 1942.—Ordered to be printed

Mr. CAPPER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 3476]

The Committee on Claims, to whom was referred the bill (H. R. 3476) for the relief of James A. Quillinan, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1714, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1714, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 3476) for the relief of James A. Quillinan, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out after the enacting clause all the language down to and including the word "thereof" in line 3, page 2, and insert in lieu thereof—

"That sections 15 to 20, inclusive, of the Act entitled 'An Act to provide compensation for employees suffering injuries while in the performance of their duties, and for other purposes,' approved September 7, 1916, as amended (U. S. C., 1934 ed., title 5, secs. 767 and 770) are hereby waived in favor of James A. Quillinan, of Denver, Colorado, who allegedly on January 17, 1939, suffered a paralytic stroke resulting in the alleged loss of the use of his right arm and leg, while an employee of the Public Works Administration, and his claim for compensation is authorized to be considered and acted upon under the remaining provisions of such Act, as amended."

The purpose of the proposed legislation is to waive sections 15 to 20 of the United States Employees' Compensation Act, approved on September 7, 1916, and allow the Commission to consider the claim of James A. Quillinan, of Denver, Colo., for disability alleged to have been incurred by him while employed by the Public Works Administration.

STATEMENT OF FACTS

According to the records, it seems that on January 5, 1939, Mr. Quillinan, accompanied by the regional director, started an inspection trip through the Williams Tunnel project, located some 10,700 feet above sea level. It is understood that the regional director furnished a statement explaining that it was

necessary to climb over obstacles, that the air was bad, and that powder gas was encountered, and that Mr. Quillinan appeared to be ill when he came out of the tunnel; that Mr. Quillinan did not know of the time limitation for filing claims before the Commission and, therefore, when his claim was filed, it was disallowed for the reason that he did not file within the statutory period of time.

Your committee are of the opinion that all employees of the United States sustaining injuries while acting in the scope of their employment should have their claims judged on their merits and should not be barred by time limitation and, therefore, it is recommended that this bill, which merely waives the section of the Employees' Compensation Commission Act, approved in September 1916 relative to time, and leaves the Commission free to determine the case on its merits, do pass.

Appended hereto is the report of the Public Works Administration together with other pertinent evidence.

FEDERAL WORKS AGENCY,
PUBLIC WORKS ADMINISTRATION,
Washington, June 3, 1941.

Hon. DAN R. McGEHEE,
Chairman, Committee on Claims, House of Representatives.

MY DEAR MR. McGEHEE: I have your letter of May 24, forwarding a copy of H. R. 3476 for the relief of James A. Quillinan, requesting a report of the facts in the case together with an opinion as to the merits of the bill and copies of papers material to a decision on the same.

Mr. James A. Quillinan was employed by the Public Works Administration May 16, 1934, and served continuously until January 17, 1939, at which time he suffered a paralytic stroke resulting in the loss of the use of his right arm and leg. It was understood from the first reports received that the stroke was brought on by overweight and high blood pressure. The employee was allowed all of the sick leave permissible under the regulations which, with his annual leave, carried him in a pay status through May 8, 1939, and he has since been on leave without pay.

The records disclose that on January 5, 1939, Mr. Quillinan accompanied the regional director on an inspection trip through the Williams Tunnel project located some 10,700 feet above sea level and it is understood that the regional director has furnished a statement explaining that it was necessary to climb over obstacles, that the air was bad, that powder gas was encountered, and that Mr. Quillinan appeared to be ill when he came out of the tunnel. The matter of determining whether or not this inspection trip had any relation to the subsequent paralytic stroke would be a function of the United States Employees' Compensation Commission, but a claim not having been filed within the required period of 1 year, the said Commission is without authority to give the same consideration.

As the bill H. R. 3476 merely authorizes the United States Employees' Compensation Commission to "consider and determine" the claim of the employee, overcoming the statutory limitation on the time of filing, it is my opinion that it is not without merit and a favorable report on the same is recommended.

The requested copies of pertinent papers in the case are enclosed.

Most sincerely yours,

M. E. GILMORE,
Commissioner of Public Works.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, July 2, 1941.

CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your request for the Commission's report upon the bill, H. R. 3476, "for the relief of James A. Quillinan." The bill provides:

"That the United States Employees' Compensation Commission be, and it is hereby, authorized and directed to consider and determine the claim of James A. Quillinan, of Denver, Colorado, for disability alleged to have been incurred by him while employed by the Public Works Administration, in the same manner and to the same extent as if the said James A. Quillinan had made application for benefits under the Act entitled 'An Act to provide compensation for employees

of the United States suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended, within the period required by sections 17 and 20 thereof. No benefit shall accrue by reason of the enactment of this Act prior to the date of such enactment: *Provided*, That claim hereunder shall be made within ninety days from the date of the enactment of this Act."

The only information the Commission has received regarding any injury or disability alleged to have been suffered by James A. Quillinan is contained in his letter to the Commission, dated May 11, 1940, in which he stated as follows: "On May 15, 1934, I was appointed to Public Works Administration and under date of January 18, 1939, I had a stroke, complete right side."

Since it did not appear that Mr. Quillinan had filed a written notice of the alleged injury or claim for compensation within 1 year, as is required by the mandatory provisions of sections 15 to 20 of the Federal Employees' Compensation Act of September 7, 1916, the Commission was without authority of law to grant him any benefits under the Federal Employees' Compensation Act, and he was so advised by letter dated May 21, 1940.

The Commission also called Mr. Quillinan's attention to the fact that the Compensation Act applies only to civil employees of the United States who receive injuries while in the performance of duty, including diseases only when they are proximately caused by the employment, and that the mere fact that a disabling condition has developed during the period of service is not of itself a sufficient basis for an award under the compensation law.

Since for the reasons stated above the Commission had no authority to award compensation in this case, no inquiry was made relative to the merits of Mr. Quillinan's case and the Commission can, therefore, express no opinion thereon, other than to mention that if the condition from which Mr. Quillinan is suffering was unrelated to a personal injury sustained while in the performance of duty as an employee of the United States, it is difficult to see how the proposed measure, if enacted, would be of any benefit to him.

It is noted that the bill contains no reference to the nature of the injury on account of which it proposes to extend relief. Such a reference is customary and it is suggested that it be added for the sake of the record and for identification of the case.

The proposed measure is apparently designed to waive in favor of James A. Quillinan the bar of the time limitations in sections 17 and 20 of the Federal Employees' Compensation Act of September 7, 1916, requiring notice of injury and claim for compensation to be filed within 1 year from the date of the injury, and to leave the Commission free to determine the merits of Mr. Quillinan's claim, if filed within 90 days from the enactment of the bill, and to afford him such measure of relief as the facts, when established, may show him to be entitled to under the Federal Employees' Compensation Act of September 7, 1916. While the bill has that apparent purpose, the language therein is not entirely appropriate to meet the situation in this case. If the bill is to receive favorable consideration, it is suggested that the present language in line 9 of the bill be deleted and in substitution therefor the following is suggested: "A. Quillinan had given notice of injury and had filed a claim for compensation under the". The reference to sections "17 and 20", in line 3, page 2, of the bill, should be changed so as to refer to sections "15 to 20, inclusive".

In view of the foregoing the Commission makes no recommendation as to the advisability of the enactment of the bill, H. R. 3476.

Very truly yours,

(Mrs.) JEWELL W. SWOFFORD, *Chairman*.

CHICAGO, June 5, 1941.

HON. LAWRENCE LEWIS,
Washington, D. C.

DEAR MR. LEWIS: As to why I failed to file claim with the United States Employees' Compensation Commission within a period of 1 year from the date of stroke, I submit the following:

The stroke was of such a character as to affect my entire right side, leg, arm, face, speech, and, very definitely, my brain. I was stricken at about 6 p. m., January 17, 1939. While unconscious I was immediately moved from our apartment at 1269 Logan Street, Denver, to St. Anthony's Hospital. I was continually watched 24 hours a day for the first month, when I was taken to a friend's place on Monaco Parkway. No visitors were allowed while at the hospital until the

last Sunday, then only three for about 20 minutes. It was 3 weeks before I could realize what Denver meant and it was several months before I could place Chicago. Then my wife brought me here. For many months my wife had to put the words in my mouth when talking. I would write letters (left hand) apparently with a clear mind and by the time answers were received they had left my mind. For nearly a year I could not remember conversations for more than 3 minutes. Up to this period, April 1940, with the assistance of my wife I would carry on a fairly interesting conversation, although I would not introduce any new subjects, just those suggested by others. My face regained its original contour.

In April 1940, I had a severe head attack which lasted 8 days. When it was over a clot of blood seemed to have been disintegrated and each week since, my head has been much better.

During the early part of May 1940, my brain became most clear and the meaning of compensation struck home; hence, I wrote the Commission asking them for claim forms. Since then I think you have evidence of my progress.

I feel I will eventually be almost normal because I continue to have severe pains in my arm and leg. I always feel better when they pass.

With best wishes, I am,

Yours sincerely,

JAMES A. QUILLINAN.

AFFIDAVIT OF JAMES A. QUILLINAN

STATE OF ILLINOIS,

County of Cook, ss:

I, James A. Quillinan, Cook County, State of Illinois, do hereby declare, that Mr. George M. Bull, regional director, Public Works Administration, Region No. 5, headquarters at Fort Worth, Tex., came from Fort Worth to Denver, Colo., on an inspection trip of various projects, including the William Fork Tunnel, the city and county of Denver, sponsors. The finished length of the tunnel was to be approximately 16,000 feet of which 13,000 feet was then bored and located at 10,500 feet altitude. The distance from Denver is approximately 50 miles west through the Continental Divide. January 4, 1939, Wednesday, Mr. Bull asked me to meet him at the tunnel at 9 a. m. on Thursday, January 5, 1939, and to accompany him on his inspection trip. It had been intimated that the city of Denver would ask the Public Works Administration for large additional expenditures to cover overruns and extras. Mr. Bull desired that I, as auditor, should have first-hand information as to possible expenditures.

January 5, 1939, Thursday, Mr. Bull and party were ready at 9 a. m. to enter the tunnel but there was an hour and a half delay due to shooting at the face. After finally entering the tunnel we spent about 3 hours in making a thorough examination. Machinery and bad ground required much strenuous climbing. The air was very wet and appeared to me to be very bad, possibly from powder gas, for about 5,000 feet from the face.

After completing the inspection there was a very steep climb back to the engineer's camp. We had lunch, I taking only coffee, as my head was aching badly. Returned to Denver about 4 p. m.

Mr. Bull's party consisted of the following: Mr. Gerald H. Steele, resident engineer inspector, Public Works Administration; Mr. James A. Quillinan, project auditor, Public Works Administration and representing the city of Denver; Mr. A. K. Vickery, engineer for the city of Denver (he did not enter the tunnel); Mr. H. C. McNaught, and staff, project engineer for the city of Denver.

January 6, 1939, Friday: At office. Drowsy. Mr. Grant L. Fritz, regional auditor, wired from Fort Worth that he would be in Denver Saturday.

January 7, 1939, Saturday: At office, Mr. Fritz and I discussed many important matters including the reorganization of my office. Mr. Fritz left at 3:30 p. m. Went directly home to rest.

January 8, 1939, Sunday: Rested. Appointment with Mr. Bull, Monday.

January 9, 1939, Monday: Spent day with Mr. Bull, discussing details pertaining to various projects.

January 10 and 11, 1939, Tuesday and Wednesday: At office. Prepared reports for Mr. Bull and completing reorganization plan as laid out by Mr. Fritz. Asked for annual leave.

January 12 through 15, 1939, Thursday through Sunday: Took sick leave. Reported same to Washington, D. C. Felt very nervous and tired; attributed it to trip to tunnel and the amount of details handled.

January 16, 1939, Monday: Spent day at Colorado State Capitol. Decided I would get reorganization working and then take annual leave.

January 17, 1939, Tuesday: Drove out to School of Mines, Golden, Colo., on assignment, returning to office at 4:30 p. m. Stricken with stroke about 6 p. m., and immediately taken to St. Anthony Hospital. Three nurses per day for first month when taken to a friend's home. One nurse for 3 months additional.

Further, affiant sayeth not.

JAMES A. QUILLINAN.

Subscribed and sworn before me at Chicago, Ill., this 7th day of June 1941.

[SEAL]

AUG C. RADOZ, *Notary Public*.

AFFIDAVIT OF GERALD H. STEELE

STATE OF OKLAHOMA,
County of *Commanche*, ss:

I, Gerald H. Steele, registered civil engineer of the State of Colorado, county of Weld, do hereby declare, that—

(1) I was employed by the Public Works Administration as resident engineer inspector on the construction of the Williams Fork Tunnel near Denver, Colo.

(2) I definitely recall that on January 5, 1939, Mr. George M. Bull, regional director, Public Works Administration, region No. 5, paid the job an inspection visit, accompanied by Mr. James A. Quillinan, project auditor, Denver, Colo.

(3) We were delayed about 1 hour in entering the tunnel and when we did enter spent about 3 hours completing inspection.

(4) Mr. Quillinan complained of a severe headache when he came out of the tunnel and left for Denver as soon as possible.

(5) I do not recall having seen Mr. Quillinan again. About January 20, 1939, I heard he was ill—result a stroke.

(6) The altitude of the Williams Fork Tunnel is in excess of 10,000 feet, and of the total length of some 16,000 feet there was about 13,000 feet completed on January 5, 1939, the date of inspection.

Further, affiant sayeth not.

GERALD H. STEELE.

Subscribed and sworn to before me at Lawton, Okla., this 21st day of June 1941.

[SEAL]

W. H. MCKENZIE, *Notary Public*.

My commission expires September 15, 1943.

AFFIDAVIT OF MARTIN F. LOUB, M. D.

COUNTY OF EL PASO,
State of *Colorado*, ss:

I, Martin F. Loub, physician, county of El Paso, State of Colorado, do hereby declare that I graduated from the University of Colorado in 1906; that I have resided and practiced the profession of doctor of medicine in the city of Colorado Springs for the past 28 years; that I became acquainted with James A. Quillinan in the early months of 1936 while he was resident project auditor for the Public Works Administration in Denver, Colo.; that I became Mr. Quillinan's family physician in January 1938 and prescribed for him and Mrs. Quillinan (his wife) occasionally when they needed a physician; that his work caused a great deal of exposure in the mountains on the western slope of Colorado and too much accumulation of work together with that exposure put him under a nervous and physical strain injurious to his health; that on returning to his Denver home January 18, 1939, after his day's work he suffered a heavy cerebral hemorrhage with resultant loss of power in right leg and arm and complete loss of speech; that he was taken to St. Anthony's Hospital in Denver that night and remained there 1 month with no apparent improvement; that he was then taken to his Denver resident home and sent for me to come to see him, which I did, and after seeing him a few times there and still no appreciable improvement I had him come to Colorado Springs on May 19, 1939, and administered to him daily until he moved to Chicago, Ill., September 30, 1939; that during his stay in Colorado Springs his speech returned considerably and he became able to walk laboriously with crutches; that I have

been in touch with him monthly since and have called on him personally once in Chicago where he is confined to the house except when attended.

MARTIN F. LOUB, M. D.

Subscribed and sworn to before me at Colorado Springs, Colo., the 20th day of June 1941.

[SEAL]

ELIZABETH LUNDBORG, *Notary Public*.

My commission expires August 29, 1942.

AFFIDAVIT OF GEORGE M. BULL

STATE OF COLORADO,

City and County of Denver, ss:

The undersigned, George M. Bull, of full age, being first duly sworn, deposes and says:

That on the 5th day of January 1939, in the course of work on Public Works Administration project Colo. 1018-R, James A. Quillinan, in the course of his employment as auditor on the project, was a member of a party engaged in examining the Williams Fork Tunnel, part of the construction work on the project.

That conditions of the work required a careful examination of the tunnel and Mr. Quillinan and I visited the tunnel early in the morning of the day above mentioned and spent about 3 hours going over the tunnel foot by foot. At that time it was driven about 13,000 feet of the entire 16,000 feet of length. There was much machinery and bad ground in the tunnel which required a great deal of climbing over obstructions. It was very wet and the air was bad in the farther one-half of the tunnel that had been driven. The tunnel is 10,000 feet in altitude above sea level.

That on coming out of the tunnel, Mr. Quillinan seemed quite unwell and had a severe headache.

That prior to my return to Fort Worth, Tex., where my office then was, and a day or two after the investigation trip, Mr. Quillinan was obviously not in good health and appeared not to have recovered from the fatigue of the trip to the tunnel.

That I have no diary notes but the above is as I remember the situation and I know that my statements are reasonably correct. Further deponent saith not.

GEORGE M. BULL.

The above and foregoing affidavit was sworn to before me this 3d day of July 1941.

[SEAL]

TILLIE FLAKS, *Notary Public*.

My commission expires April 25, 1944.

AFFIDAVIT OF H. C. McNAUGHT

STATE OF COLORADO,

City and County of Denver, ss:

The undersigned, H. C. McNaught, of full age, being first duly sworn, deposes and says:

That on the 5th day of January 1939, James A. Quillinan, project auditor on Public Works Administration Project Colo. 1018-R, was a member of an inspection party in the Williams Fork Tunnel and over a period of several hours traversed the entire driven length of the tunnel, about 2½ miles, during the course of the morning. As is usual in tunnel operations, the going was hard, the air was bad, and inspection was tiring.

Mr. Quillinan was exhausted by the trip and showed it plainly when he came out of the tunnel. Shortly after, he was off the job and it was reported that he had had a stroke. The job is finished and Mr. Quillinan did not again report on the job. Further affiant saith not.

H. C. McNAUGHT.

The above and foregoing affidavit was sworn to before me this 3d day of July 1941.

TILLIE FLAKS, *Notary Public*.

My commission expires April 25, 1944.

AFFIDAVIT OF G. W. TOWNSEND

STATE OF COLORADO,

City and County of Denver, ss:

The undersigned, G. W. Townsend, of full age, being first duly sworn, deposes and says:

That he is a duly licensed and regularly practicing physician, having offices in the city and county of Denver, so licensed and practicing for many years.

That on or about the 10th day of January 1939, James A. Quillinan required my professional services. At the time I examined him and during the time thereafter when I treated him he was suffering from a total paralysis resulting from apoplexy which had been precipitated, according to the history of the case, by overexertion some 5 days previously in connection with the inspection of a tunnel through the high mountains to the west of Denver, on which inspection trip he apparently overexerted himself so as to cause the onset of the apoplexy. I treated Mr. Quillinan over a period of several months. His recovery was very gradual and when he left Denver his recovery had not progressed to the point where he would be capable of any work of any nature and, in fact, was still so bad that it should be said that he was not a responsible individual in any sense. Further deponent saith not.

G. W. TOWNSEND.

The above and foregoing affidavit was sworn to before me this 3d day of July 1941.

[SEAL]

TILLIE FLAKS, *Notary Public.*

My commission expires April 25, 1944.

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